

State of Utah

DEPARTMENT OF ENVIRONMENTAL QUALITY DIVISION OF RADIATION CONTROL

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MEMORANDUM

From: Rob Herbert

To: Bill Sinclair

Date: June 26, 2003

Subject: Clarification of October 4, 2000 Email Regarding July 28, 1999 Envirocare NOV

The purpose of this memorandum is to clarify the reason for the subject email I sent to you on October 4, 2000 regarding the July 28, 1999 Envirocare Notice of Violation (NOV).

Apparently, the subject email has been taken out of context in an attempt to discredit the DRC. In short, the primary reason for sending the email was to provide DRC management with pertinent information to use in the event that Envirocare contested the civil penalty of the July 28, 1999 NOV. Because 15 months had elapsed between the issuance of the NOV and the submittal of the subject email, I wanted to make it explicitly clear to DRC management that adequate enforcement discretion had already been applied to the NOV just in case Envirocare tried to contest the civil penalty. It was not my intention to indicate or suggest in any way that the civil penalty was inadequate. On the contrary, the enforcement discretion exercised by the Executive Secretary in imposing the civil penalty was instrumental in fostering the good faith effort and diligence of Envirocare's ground water manager, Dan Shrum, to effectively implement corrective actions for solving the programmatic problems identified in the NOV.

It should be noted that there was a change in Envirocare ground water managers during the period in which the non-compliances identified in the July 28, 1999 NOV took place. Between March 1, 1998 and July 15, 1999, Richard Paulson was the Envirocare ground water manager; Dan Shrum has been the Envirocare ground water manager since July 15, 1999. Subsequent to the issuance of the July 28, 1999 NOV, Dan Shrum has progressively corrected non-compliances and steadily improved the compliance status of the ground water quality discharge permit. Since Mr. Shrum has been hired as the Envirocare ground water manager on July 15, 1999, the MDL problems have been corrected and the exceedences of ground water protection levels (GWPLs) have been effectively managed. As a result, the compliance status of the ground water quality discharge permit has been significantly improved.

From: Robert Herbert
To: Bill Sinclair
Date: 10/4/00 4:09PM
Subject: July 28, 1999 NOV

With the issuance of the latest Permit Mod. on Oct. 2, 2000, the major ground water monitoring deficiencies identified in the subject NOV have finally been resolved. I just realized yesterday that the DRC has not received the Civil Penalty of \$17,812.50 for this NOV. Obviously, the NOV cannot be closed until we receive the Civil Penalty from Envirocare. In anticipation of Envirocare attempting to reduce the penalty, the following information is provided if you need it.

1. The two primary problems identified in this NOV were quite serious in terms of the Utah groundwater protection rules. Having MDLs above ground water protection levels renders the data useless and places the Permittee's facility in an unanalyzed condition for that semi-annual monitoring period. Furthermore, having numerous GWPL exceedences and failing to initiate corrective actions violates the very essence of the ground water protection rules.

2. The bundling of numerous similar violations grossly understated what the civil penalty could have been as indicated below.

* Violation 1: 265 separate MDL violations were bundled into one violation for an escalated civil penalty of \$5,000 instead of \$198,750 assuming each individual instance is a \$750 Level IV violation.

* Violation 2: 450 separate instances of failing to follow procedures for evaluating non-compliance status were bundled into one violation for an escalated civil penalty of \$5,000 instead of \$337,500, assuming each instance is a \$750 Level IV violation.

There were more two other violations but don't think I need to go any further with this argument.

3. Rather than cite the same violations that were identified in the July 28, 1999 NOV, the Executive Secretary used enforcement discretion for subsequent semi-annual monitoring reports and issued Notices of Enforcement Discretion on September 22, 1999; March 22, 2000; and September 14, 2000 instead of NOV's. The NRC did not use the same discretion and issued NOV's.

In conclusion, it is very clear that the DRC has already been very generous in its enforcement approach.

CC: Dane Finerfrock